Foo Khai Yuen & Anor v Pengarah Jabatan Pendaftaran Negara Kuching, Negeri Sarawak

HIGH COURT (MIRI) — SUIT NO 22–56 OF 2007 (MR)
STEPHEN CHUNG JC
22 SEPTEMBER 2011

Administrative Law — Judicial review — Certiorari — Application to quash decision of Registrar in refusing application to correct date of birth on birth certificate — Whether rejection of application reasonable — Wide discretion of Registrar to decide on application — Whether proper for court to interfere with exercise of Registrar's discretion — Whether decision ultra vires, null and void

Constitutional Law — Citizenship — Proof of — Birth certificate — Application to correct date of birth — Date of birth registered as 23 January 1938 instead of 23 January 1940 due to Chinese custom of adding two years to date of birth of a child — Application rejected on grounds that Registrar not satisfied with application — Failure to prove existence of such custom — Criteria to be considered by Registrar — Wide discretion of Registrar to decide on application — Whether rejection of application reasonable — Registration of Births and Deaths Ordinance (Sarawak) (Cap 10) s 25(3)

On 3 January 1995 the first plaintiff had applied to amend or correct his date of birth from 23 January 1938 to 23 January 1940. His application was rejected on 30 January 1995 by the defendant and the first plaintiff filed an originating motion for an order of certiorari to quash the decision of the defendant in rejecting the first plaintiff's application. The parties agreed to settle the originating motion by the defendant agreeing to quash its decision made on 30 January 1995 and that the second plaintiff should on behalf of the first plaintiff apply to the defendant to amend or correct the date of birth of the first plaintiff. Hence, an application was made by the second plaintiff for the correction. However on 5 February 1997 the defendant rejected her application. The grounds for the rejection was contained in a letter dated 31 March 1997 which explained that under s 25(3) of the Registration of Births and Deaths Ordinance (Sarawak) (Cap 10) ('the Ordinance'), the regional registrar was not satisfied with the application. The plaintiffs thus commenced this action claiming, inter alia: (a) for an order of certiorari to quash the decision of the defendant dated 5 February 1997; (b) for a declaration that the said decision was ultra vires, null and void; and (c) for an order that the defendant make such correction on the first plaintiff's date of birth by such entry or entries as provided under s 25(3) of the Ordinance. The

first plaintiff testified that his mother had registered his date of birth as 23 January 1938 instead of 23 January 1940 because his mother followed a Chinese custom to add two years to the age or date of birth of a child when the child was born. The defendant elected not to call any witness at the close of the plaintiffs' case. The defendant submitted that the plaintiffs had failed to call any expert witness to prove the existence of such a Chinese custom.

Held, dismissing the plaintiffs' claims with costs:

(1) The existence of such a custom was a relevant fact which must be proved at the trial. It was incumbent on the plaintiffs to prove the existence of such a custom. Apart from the assertion made by the first plaintiff, the plaintiffs did not call any Chinese community leader or Chinese cultural expert or witness to testify that such a custom existed and that it was common among the Chinese to add two years to the age of a child when the child was born. The plaintiffs had failed to prove the existence of such a custom (see para 19–20).

(2) Section 25(3) of the ordinance does not set out the criteria which the regional registrar should take into consideration in deciding whether to allow an application for correction. It also does not set out any restrictions how his discretion is to be exercised. From the wordings used in the section, he has wide discretion to decide on an application for correction (see para 25).

(3) Where the legislation gives a discretion to the regional registrar to decide on an application, it is not proper for the court to interfere with the exercise of that discretion except where the law provides for a judicial review of that decision (see para 27).

(4) There were two unsatisfactory features concerning the application for correction. Firstly, the certificate of birth of the first plaintiff showed that it was a late registration as his birth was only registered on 20 December 1956, some 16–18 years later, using the date of birth 23 January 1938 and 23 January 1940. The certificate of birth of Foo Kok Ying showed that it was also a late registration. Her birth which was stated to be on 25 January 1938 was only registered on 25 June 1957. Secondly, the application of the second plaintiff included a document stating that at that material time she had three children, namely Woo Kok Yin, Woo Chow Yuen and Foo Khai Yuen (the first plaintiff). However, she also stated in that document that they were her stepchildren. The first plaintiff explained that it was a mistake. However, the purported mistake contradicted the second plaintiff's statutory declaration that she was the natural mother of the first plaintiff and that she had personal knowledge that he was born on 23 January 1940. Hence, questions or doubts arose as to the truth or correctness of the application for correction. Therefore

it was reasonable and understandable that the defendant found the application to be not satisfactory (see para 28).

(5) There was nothing in the consent order nor in the agreed facts which provided that the defendant had agreed or must approve the application for correction. Failing such an agreement or order, the application must be considered in the usual manner and on merits. There was nothing to stop the defendant from rejecting the application under s 25(3) of the Ordinance. The defendant was not in breach of the consent order and res judicata did not apply to the decision of the defendant made on 5 February 1997 as it had not been decided by a court of competent jurisdiction previously (see para 33).

[**Bahasa Malaysia summary**
Pada 3 Januari 1995, plaintif pertama telah memohon untuk meminda atau membetulkan tarikh lahirnya daripada 23 Januari 1938 kepada 23 Januari 1940. Permohonannya ditolak pada 30 Januari 1995 oleh defendan dan plaintif pertama memfailkan usul pemula untuk mendapatkan suatu perintah certiorari bagi membatalkan keputusan defendan dalam menolak permohonan plaintif pertama. Pihak-pihak bersetuju untuk menyelesaikan usul pemula dengan persetujuan defendan untuk membatalkan keputusan yang dibuat pada 30 Januari 1995 dan bahawa plaintif kedua bagi pihak plaintif pertama perlu memohon kepada defendan untuk meminda atau membetulkan tarikh kelahiran plaintif pertama. Oleh itu, permohonan telah dibuat oleh plaintif kedua bagi pembetulan. Walau bagaimanapun, pada 5 Februari 1997 defendan menolak permohonannya. Alasan bagi penolakan tersebut terkandung dalam surat bertarikh 31 Mac 1997 yang menjelaskan bahawa di bawah s 25(3) Pendaftaran Kelahiran dan Kematian Ordinan (Sarawak) (Bab10) ('Ordinan'), pendaftar serantau tidak berpuas hati dengan permohonan tersebut. Oleh itu, plaintif memulakan tindakan ini, menuntut, antara lain: (a) untuk mendapatkan suatu perintah certiorari membatalkan keputusan defendan bertarikh 5 Februari 1997; (b) bagi suatu deklarasi bahawa keputusan tersebut adalah ultra vires, terbatal dan tidak sah dan (c) untuk mendapatkan suatu perintah mengkehendaki defendan membuat apa-apa pembetulan pada tarikh lahir plaintif pertama dengan kemasukan penyertaan atau penyertaan-penyertaan sebagaimana yang diperuntukkan di bawah s 25(3) Ordinan tersebut. Plaintif pertama memberi keterangan bahawa ibunya telah mencatatkan tarikh lahir 23 Januari 1938 dan bukannya 23 Januari 1940 kerana ibunya mengikuti satu adat Cina untuk menambah dua tahun kepada umur atau tarikh kelahiran kanak-kanak apabila kanak-kanak dilahirkan. Defendan memilih untuk tidak memanggil mana-mana saksi pada penutup kes plaintif. Defendan menghujahkan bahawa plaintif telah gagal untuk memanggil mana-mana saksi pakar untuk membuktikan kewujudan adat Cina sedemikian.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Kewujudan adat sedemikian adalah fakta relevan yang mesti dibuktikan

ketika perbicaraan. Ia adalah kewajipan ke atas plaintif untuk membuktikan kewujudan adat sedemikian. Selain daripada dakwaan yang dibuat oleh plaintif pertama, plaintif tidak memanggil mana-mana pemimpin masyarakat Cina atau pakar kebudayaan Cina atau saksi untuk memberi keterangan bahawa adat seperti itu wujud dan bahawa ia adalah perkara biasa di kalangan kaum Cina untuk menambah dua tahun kepada umur kanak-kanak apabila kanak-kanak tersebut dilahirkan. Plaintif telah gagal untuk membuktikan kewujudan adat sedemikian (lihat perenggan 19–20).

(2) Seksyen 25(3) Ordinan tidak menetapkan kriteria yang sepatutnya diambil kira pendaftar serantau dalam memutuskan sama ada membenarkan permohonan bagi pembetulan. Ia juga tidak dinyatakan sebarang sekatan bagaimana budi bicaranya seharusnya dijalankan. Berdasarkan perkataan-perkataan yang digunakan dalam seksyen tersebut, beliau mempunyai budi bicara yang luas untuk memutuskan permohonan bagi pembetulan (lihat perenggan 25).

(3) Di mana undang-undang memberi kuasa budi bicara kepada pendaftar serantau untuk membuat keputusan ke atas permohonan, tidak wajar bagi mahkamah untuk campur tangan dengan menjalankan budi bicara tersebut kecuali jika undang-undang memperuntukkan bagi semakan kehakiman keputusan tersebut (lihat perenggan 27).

(4) Terdapat dua ciri-ciri yang tidak memuaskan berkaitan dengan permohonan bagi pembetulan. Pertama, sijil kelahiran plaintif pertama menunjukkan bahawa ia adalah pendaftaran yang lewat kerana kelahirannya hanya didaftarkan pada 20 Disember 1956, kira-kira 16-18 tahun kemudian, menggunakan tarikh lahir 23 Januari 1938 dan 23 Januari 1940. Sijil kelahiran Foo Kok Ying menunjukkan bahawa ia adalah juga pendaftaran lewat. Kelahirannya, yang dicatatkan sebagai 25 Januari 1938 hanya didaftarkan pada 25 Jun 1957. Kedua, permohonan plaintif kedua memuatkan dokumen yang menyatakan bahawa pada masa material tersebut dia mempunyai tiga orang anak, iaitu Woo Kok Yin, Woo Chow Yuen dan Foo Khai Yuen (plaintif pertama). Walau bagaimanapun, dia juga menyatakan dalam dokumen tersebut bahawa mereka adalah anak tirinya. Plaintif pertama menjelaskan bahawa ia adalah satu kesilapan. Walau bagaimanapun, kesilapan yang dikatakan bercanggah dengan akuan berkanun plaintif kedua bahawa dia adalah ibu kandung plaintif pertama dan bahawa dia mempunyai pengetahuan peribadi bahawa dia dilahirkan pada 23 Januari 1940. Oleh itu, persoalan atau keraguan timbul ke atas kebenaran atau kesahihan permohonan bagi pembetulan. Oleh itu adalah munasabah dan difahami bahawa defendan mendapati permohonan tersebut tidak memuaskan (lihat perenggan 28).

(5) Tiada apa-apa jua dalam perintah persetujuan mahupun fakta-fakta yang

dipersetujui yang memperuntukkan bahawa defendan telah bersetuju atau mesti meluluskan permohonan bagi pembetulan. Jika perjanjian atau perintah sedemikian gagal, permohonan tersebut perlu dipertimbangkan dalam cara yang biasa dan pada merit. Tiada apa-apa yang menghalang defendan daripada menolak permohonan di bawah s 25(3) Ordinan tersebut. Defendan tidak melanggar perintah persetujuan dan res judicata tidak terpakai kepada keputusan defendan yang dibuat pada 5 Februari 1997 kerana ia belum diputuskan oleh mahkamah yang berbidang kuasa kompeten sebelum ini (lihat perenggan 33).]

Notes

For a case on proof of, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) para 2156.

For cases on certiorari, see 1(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 280–290.

Cases referred to

Jaafar bin Shaari & Anor v Tan Lip Eng [1997] 3 MLJ 693; [1997] 4 CLJ 509, SC (refd)

Minister of Labour, Malaysia v Chan Meng Yuen [1992] 2 MLJ 337; [1992] 1 CLJ (Rep) 216, SC (refd)

Yong Sze Fatt v Pengkalen Securities Sdn Bhd [2010] 1 MLJ 85; [2010] 1 CLJ 484, CA (refd)

Legislation referred to

Evidence Act 1950 ss 13, 48, 101, 102, 103

Registration of Births and Death Ordinance (Sarawak) (Cap 10) s 25(1), (2), (3)

Rules of the High Court 1980 O 53

Tai Choi Yu (Tai Choi Yu & Co Advocates) for the plaintiffs.
Taufik bin Mohd Yusoff (Senior Federal Counsel) for the defendant.

Stephen Chung JC:

[1] The plaintiff's claims against the defendant are as follows:

(a) for an order of certiorari to remove the decision of the defendant dated the 5 February 1997 into this court and quashed;

(b) alternatively, for a declaration that the said decision of the defendant in refusing or rejecting the plaintiff's application for correction was ultra vires, null and void on the grounds that the defendant had not used or had misused or abused his discretion or acted in excess of his powers or

jurisdiction or that he took irrelevant matters into consideration and that the decision was irrational, unreasonable or contrary to the elementary rules of natural justice and fairness;

(c) further and/or alternatively, for an order that the defendant make such correction on the first plaintiff's date of birth by such entry or entries as provided under s 25(3) of the Registration of Births and Deaths Ordinance (Sarawak) (Cap 10); and

(d) general damages for breach of the consent order as for all necessary and consequential direction.

[2] At the commencement of trial, the parties agreed to the authenticity of the documents in the bundles of documents filed for the trial, the contents subject to proof.

[3] The agreed facts of the case were as follows. On 30 May 1995, the first plaintiff filed Originating Motion No MR 7 of 1995 at the Miri High Court seeking, inter alia, for an order of certiorari to quash the decision of the regional/senior registrar (of births and deaths) made on 30 January 1995 rejecting or refusing the first plaintiff's application to correct his date of birth from 23 January 1938–23 January 1940 under s 25(3) of the Registration of Births and Death Ordinance (Sarawak) (Cap 10).

[4] On 21 September 1995, at the hearing of OM No MR 7 of 1995, the High Court in Miri granted the first plaintiff an extension of time to file and apply for leave.

[5] On the date of the hearing for certiorari in OM No MR 7 of 1995 on 8 February 1996, the first plaintiff and the defendant agreed through their respective counsel to settle the case by way of a consent order whereby the defendant agreed to quash the impugned decision made on 30 January 1995 and that Ng Sam Lan (f) the second plaintiff herein was to apply for and on behalf of the first plaintiff the change of the first plaintiff's date of birth from 23 January 1938–23 January 1940 with the same information and evidence available and produced in OM No MR 7 of 1995.

[6] Pursuant to the consent order, on 8 February 1996 the second plaintiff applied under JPN 52 to change the first plaintiff's date of birth. The Application Form JPN 52 was supported by the two statutory declarations of the second plaintiff dated 5 December 1995 and 8 February 1996 respectively and the statutory declaration of Foo Kok Ying (f) dated 8 February 1996. The statutory declaration of Lee Fay Neng (f) dated 6 October 1990 was contained in exh 'A' of the statement of claim.

[7] About the end of March 1996, the second plaintiff received a letter dated 23 March 1996 from the defendant requesting for a meeting with her in Kuching.

[8] On receipt of the letter, the first plaintiff went personally to the defendant's office in Kuching and explained to a Ms Alizah bt Abdul Aziz that the second plaintiff was very old, could not walk, her hearing and vision were poor and it would be reasonable and convenient in the circumstances that she or any other officer should fly to Miri for the meeting. The first plaintiff also offered to pay for the air-fares and all expenses including accommodation. This offer was also in the first plaintiff's lawyer's letter dated 15 April 1996. The first plaintiff's offer was not taken up by the defendant. The second plaintiff received another letter from the defendant's Miri office dated the 30 July 1996 seeking the meeting.

[9] By letters dated 21 January 1997 and 3 March 1997 from first plaintiff's lawyers Ms Tai Choi Yu & Co asking about the delay, the defendant sent by fax a letter dated 5 February 1997 addressed to the second plaintiff to the first plaintiff's lawyers on 13 March 1997 rejecting her application.

[10] On receipt of the fax on 13 March 1997, the first plaintiff's lawyers had written to the defendant a letter dated 22 March 1997 seeking the reasons for the rejection. The plaintiff's said that no reason had been given to the first plaintiff for the rejection by the defendant except for a letter dated 31 March 1997 to say that the *pengarah*/director acting as the regional/senior registrar was dissatisfied with the second plaintiff's application.

[11] The plaintiff's lawyers had also written to the defendant at Miri for a copy of the record of proceedings of the meeting and questions and answers session which took place at Miri on 12 August 1996 and also a copy of the defendant's investigation report, if any. The first plaintiff did not receive the record of proceedings and investigation report.

[12] The plaintiffs again filed an Originating Motion No 25–11 of 1997(MR) for a judicial review of the decision of the regional registrar made on 5 February 1997 in rejecting the application for correction. This originating motion was converted into this suit action. The application in OM No MR7 of 1995 was in all respects identical or similar to the application in this action except that the second plaintiff has now been added as a party because she was the applicant in the defendant's Department Form JPN 52.

[13] The plaintiffs called two witnesses for the trial, namely the first plaintiff (PW1) and Chan Mui Mui (PW2) who is the first plaintiff's half-sister. The first plaintiff testified that he was born on 23 January 1940 and not on

23 January 1938 as registered in his birth certificate. The first plaintiff exhibited a statutory declaration of Lee Fay Neng (deceased) who was the mid-wife who delivered him during his birth and the statutory declarations of the second plaintiff to establish that he was born on 23 January 1940.

[14] The first plaintiff also exhibited the birth certificate of his elder sister Foo Kok Ying who was born on 25 January 1938 to show that it was not possible for her mother to give birth to his elder sister and to him within a space of two days. PW2 was called to testify that Foo Kok Ying was older than the first plaintiff and since Foo Kok Ying was born on 25 January 1938, the first plaintiff could not be born on 23 January 1938.

[15] During the trial, the first plaintiff said that the reason his mother registered his date of birth as 23 January 1938 instead of 23 January 1940 was because his mother followed a Chinese custom to add two years to the age or date of birth of a child when the child was born.

[16] The second plaintiff in her statutory declaration explained that she registered his birth in 1956 and the year of birth recorded was wrongly based on a Chinese custom of adding a year of age for the gestation period and another year on birth preceding the Lunar Calendar Chinese New Year. The first plaintiff then referred to a Chinese calendar in an attempt to explain the date. However, the plaintiffs did not include any translated copy of the calendar and it was not admissible.

[17] The defendant elected not to call any witness at the close of the plaintiffs' case. In a civil proceedings, once a defendant elects not to give evidence, then all the evidence led by the plaintiff must be assumed to be true: *Jaafar bin Shaari & Anor v Tan Lip Eng* [1997] 3 MLJ 693; [1997] 4 CLJ 509, *Yong Sze Fatt v Pengkalen Securities Sdn Bhd* [2010] 1 MLJ 85; [2010] 1 CLJ 484.

[18] The defendant submitted that the assumptions are rebuttable and that on the evidence presented by the plaintiffs, the plaintiffs have failed to prove their case. In particular, it was submitted that the plaintiffs have failed to call any expert witness to prove the existence of such a Chinese custom.

[19] The existence of such a custom is a relevant fact which must be proved at the trial. It was incumbent on the plaintiffs to prove the existence of such a custom: see ss 13, 101, 102, 103 of the Evidence Act. Section 48 of the Evidence Act specifically provides that when the court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of such custom or right of persons who would be likely to know of its existence, if it existed, are relevant.

[20] Apart from the assertion made by the first plaintiff, the plaintiffs did not call any Chinese community leader or Chinese cultural expert or witness to testify that such a custom existed and that it was common among the Chinese to add two years to the age of a child when the child was born. The plaintiffs had failed to prove the existence of such a custom.

[21] The evidence showed that on 3 January 1995, the first plaintiff applied to amend or correct his date of birth from 23 January 1938–23 January 1940. His application was rejected by the defendant on 30 January 1995. As the agreed facts showed, the first plaintiff filed OM 7 of 1995 for an order of certiorari to quash the decision of the defendant in rejecting the first plaintiff's application. The agreed facts also showed that the parties agreed to settle OM 7 of 1995 by the defendant agreeing to quash its decision made on 30 January 1995 and that the second plaintiff should on behalf of the first plaintiff apply to the defendant to amend or correct the date of birth of the first plaintiff.

[22] The evidence showed that by a letter dated 5 February 1997, the defendant also rejected her application. The ground for the rejection was contained in a letter dated 31 March 1997 which explained that under s 25(3) of the Birth and Death Ordinance, the regional registrar was not satisfied with the application.

[23] Section 25(1) of the Ordinance provides that no alteration shall be made in any register except as authorised in this ordinance. Section 25(2) provides for the correction of any clerical error.

[24] Under s 25(3), any error of fact or substance in any register may be corrected by entry (but so that no alteration on the original entry is made) by the regional registrar or senior registrar, on payment of the prescribed fee by the person requiring such error to be corrected, on the production to him by the person of two statutory declarations made by two persons giving information concerning the birth and setting forth the nature of the error and the facts of the case to the satisfaction of the regional or senior registrar of the truth of the case.

[25] Section 25(3) does not set out the criteria which the regional registrar should take into consideration in deciding whether to allow an application for correction. It also does not set out any restrictions how his discretion is to be exercised. From the wordings used in the section, he has wide discretion to decide on an application for correction.

[26] The first plaintiff complained that no explanation had been given for rejecting the second plaintiff's application whereas the defendant submitted that the explanation given in the letter dated 31 March 1997 was sufficient and

that there was no duty imposed by law on the defendant to give the plaintiffs any specific reason why the application was rejected, citing the case of *Minister of Labour, Malaysia v Chan Meng Yuen* [1992] 2 MLJ 337; [1992] 1 CLJ (Rep) 216 in support of this contention.

[27] I agree that where the legislation gives a discretion to the regional registrar to decide on an application, it is not proper for the court to interfere with the exercise of that discretion except where the law provides for a judicial review of that decision pursuant to O 53 of the RHC.

[28] On the evidence before the court, there were two unsatisfactory features concerning the application for correction. Firstly, the certificate of birth of the first plaintiff showed that he was born on 23 January 1938 at Lutong, Miri, Sarawak. His father's name was stated as Foo Wai and his mother's name was stated as Ng Sam Lan. The certificate of birth showed that it was a late registration as his birth was only registered on 20 December 1956, some 16–18 years later, using the date of birth 23 January 1938 and 23 January 1940. The certificate of birth of Foo Kok Ying showed that it was also a late registration. Her birth which was stated to be on 25 January 1938 was only registered on 25 June 1957.

[29] Secondly, the application of the second plaintiff included a document regarding her application for registration as a citizen. In this document, she stated that at that material time she had three children, namely Woo Kok Yin, Woo Chow Yuen and Foo Khai Yuen (the first plaintiff). However, she also stated in this document that they were her step children. The first plaintiff explained that it was a mistake. However, unless and until the purported mistake was corrected, it would contradict the second plaintiff's statutory declaration that she was the natural mother of the first plaintiff and that she had personal knowledge that he was born on 23 January 1940.

[30] The late registrations of the birth of the first plaintiff and of Foo Kok Ying and the question whether the second plaintiff was the natural or step mother of the first plaintiff would raise some questions or doubts as to the truth or correctness of the application for correction.

[31] Therefore it was reasonable and understandable that the defendant found the application to be not satisfactory. The plaintiffs had not shown that it was wrong for the defendant to have so decided. The plaintiffs had also not shown that it was proper for the court to interfere with and set aside that decision and there was no reason for the court to do so in this suit action.

[32] Was the defendant, in rejecting the application for correction of the second plaintiff, in breach of and therefore in contempt of the consent order

made on 8 February 1996? The agreed facts referred to above stated that by consent the defendant agreed to quash his decision made on 30 January 1995. This was set out in the consent order made on 8 February 1996. The consent order went on to say that the applicant (first plaintiff) withdrew his application for declaration and mandamus. The agreed facts referred to above stated that the second plaintiff was to apply for and on behalf of the first plaintiff the change of the first plaintiff's date of birth from 23 January 1938–23 January 1940. This the second plaintiff had done.

[33] There was nothing in the consent order nor in the agreed facts which provided that the defendant had agreed or must approve the application for correction. Failing such an agreement or order, the application must be considered in the usual manner and on merits. There was nothing to stop the defendant from rejecting the application under s 25(3) of the Ordinance. The defendant was not in breach of the consent order and res judicata did not apply to the decision of the defendant made on 5 February 1997 as it had not been decided by a court of competent jurisdiction previously.

[34] From the documents exhibited in the bundles of documents filed for the trial, the plaintiffs had exhibited a copy of the record of proceedings which took place at the defendants' office at Miri on 12 August 1996.

[35] On the evidence before the court, the plaintiffs had failed to prove their case against the defendant on a balance of probabilities. The plaintiffs' claims are dismissed with costs to be taxed if not agreed.

Plaintiffs' claims dismissed with costs.

Reported by Kanesh Sundrum